**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Civil Review Nos. 22,15 and 16 of 2006**

**Judgment reserved on 20.3.2007**

**Date of decision 03.04.2007**

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**For title : see reverse**

***Coram***

**The Hon'ble Mr. Justice : V.K. Gupta, Chief Justice**
**The Hon'ble Mr. Justice : Surjit Singh, Judge**

**Whether approved for reporting?**

**For the petitioners:**
**(See reverse)**
**For the respondents :**

**Surjit Singh, Judge**

Civil Review Petition No. 22 of 2006, under Section 114 read with Order 47, Rule 1 and Section 151 of the Code of Civil Procedure Code has been filed by Shri Dhirendra Khare, who was earlier posted as Commissioner, Income Tax at Shimla, seeking expunction of certain observations made by this Court in its judgment dated 2.3.2006, whereby Civil Writ Petition No. 800 of 2005 and Income Tax Appeal No. 50 of 2005 had been disposed of. The

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**Whether reporters of Local Papers may be allowed to see the Judgment?**

grievance of the review petitioner is that the observations, which amount to his condemnation, had been made without hearing him and, therefore, they are liable to be expunged.

2. Facts relevant for the disposal of this petition may be noticed. On 7.2.2002 Assessing Officer, Solan decided to conduct survey, under Section 133 of the Income Tax Act, in respect of the income for the years 2000-2001, shown by respondent No. 2 M/s Greenworld Corporation, Parwanoo in its tax return. On 19.12.2002 she passed an order accepting the return as filed by the assessee. However, below that order of acceptance of the return, she recorded a note that on 4.12.2002 she had visited the office of the present petitioner at Shimla, who was then working as Commissioner, Income Tax, Shimla, on getting telephonic call on 3.12.2002 and the petitioner after going through the record, directed that no more information be called for and the case was to be assessed as such and accordingly she had passed the order accepting the return, as filed by the assessee. After the transfer of the review petitioner, his successor came to know about the aforesaid order of the Assessing Officer, Solan. He suo motu exercised his revisional power, under Section 263 of the Income Tax Act, and set aside the order and directed the survey not only in respect of income for the year 2000-2001, but also in respect of the earlier and the subsequent years. Appeal was carried against the aforesaid order of the successor of the review petitioner, to the Income Tax Appellate Tribunal by the assessee.

The Tribunal accepted the appeal holding that the order of the Assessing Officer was based on enquiry conducted by the Assessing Officer. Consequently the order passed by the successor of the review petitioner was set aside. Revenue came in appeal to this Court, under Section 260-A of the Income Tax Act. This Court vide judgment dated 2.3.2006 accepted that appeal holding that the order of the Assessing Officer, Solan, which had been revised by the successor of the review petitioner, was the result of interference by the present review petitioner, as per note recorded by the Assessing Officer below her order. The observations made by this Court, based on the aforesaid note, find mention in para 16 of the said judgment, which is reproduced below in full:-

> "16. A careful reading of the order shows that though the operative part of the order records that the return had been accepted in view of the information supplied by the assessee and the facts on file, yet the office note recorded below the said order, makes it plainly clear that the aforesaid order was passed by the Income Tax Officer under pressure from the Commissioner of Income Tax. The order is dated 4.12.2002. In the note below the order it is stated that the Income Tax Officer was called to the office of the Commissioner of Income Tax, Shimla on 3.12.2002 and the said Commissioner of Income Tax himself went through the questionnaires and the response of the assessee to the said questionnaires as also various replies submitted by the assessee and directed that since the reply submitted by the assessee was satisfactory and upto the mark, no more information was required to be called for and further directed to

assess the case as such. This note unmistakeably indicates that the Income Tax Officer herself was not satisfied with the reply of the assessee and wanted to have some more information. If it were not so, why should have the Commissioner of Income Tax directed that no more information was required to be called for and that the assessment be finalized as per return. Also, the Income Tax Officer would not have recorded this foot note had there been no pressure upon her. The note is indicative of the fact that the Income Tax Officer was not only under pressure from the Commissioner of Income Tax to accept the return submitted by the assessee, but she was also of the view that the return was not in order and that if she accepted it as such, she could be in trouble at some later point of time when the matter came to the notice of some superior officer (other than the person holding the office of Commissioner of Income Tax, Shimla at that time). That is why she recorded this foot note on the order to safeguard herself against apprehended trouble in future. Under these circumstances, we have no hesitation in holding that the order was passed by the Assessing Officer, not only without application of mind, but also on account of illegal and unwarranted interference in her statutory functioning by the then Commissioner of Income Tax, Shimla. In other words, the order of the Income Tax Officer was not based on any view formed by her, on the basis of the material before her, but on the dictation of a superior officer. If that is so, the contention of the respondent – assessee that the Assessing Officer had formed a view on the basis of the material before her and the said view was not perverse or was not such which could have been formed on the basis of the material on record, the Commissioner of Income Tax, in exercise of the power under

Section 263 of the Income Tax Act, could not have substituted that view with his own view, cannot be accepted."

3. In para 41 of the judgment, which too is reproduced here-in-below, this Court directed that the Appointing Authority of the review petitioner shall approach the Chief Vigilance Commissioner to inquire into the matter regarding interference in the statutory functioning of the Assessing Officer and pressuring her to pass the order accepting the return of the assessee.

> "41. Before parting with the judgment, we feel that it is desirable and in the public interest that the Chief Vigilance Commissioner is approached by the Appointing Authority of the Commissioner of Income Tax, who interfered in the statutory functioning of the Assessing Officer and pressurized her to pass the order accepting the return of the assessee, to inquire into the matter and if on inquiry the Chief Vigilance Commissioner finds and reports that the said Commissioner of Income T0061 was guilty of misconduct, action is taken against him by his such Authority, as per law. We direct the Appointing Authority of the said Commissioner accordingly."

Petitioner's grievance is that he has been condemned unheard.

4. We have heard the learned counsel for the review petitioner. It is true that no notice was issued to the review petitioner nor any opportunity of being heard was granted to him by this Court before making the observations. But the aforesaid observations are not the findings of this Court that the review petitioner in fact interfered with the functioning of the Assessing Officer, Solan or

pressurized her into closing the inquiry and passing the order of accepting the return as such. These observations are based on the interpretation and construction of the note appearing below the order dated 19.12.2002 of the Assessing Officer, Solan. Even though the observations are based on the interpretation and the construction of the note below the aforesaid order of the Assessing Officer, still at certain points in para 16 and particularly in para 41 this Court has not specifically said that these observations are based on the interpretation of the said note and one may gather an impression (from some of the observations, about which there is no specific reference) that the same are the Court's own observations / findings. As a matter of fact there was no material before this Court suggesting whether what was written in the note was true or untrue. The observations were made because the note appears below the order. The purpose of making the observations in para 16 was to elaborate that the order of the Assessing Officer was bad having been passed on account of interference and under pressure from the superior authority, according to the Assessing Officer herself. Whether the interference and the pressure mentioned in the said note, were real or imaginary, that was not gone into by this Court nor was it necessary to do so for the purpose of disposing of the appeal, because in either case(that is to say, in the case of the interference and pressure being real or even in the case of it being unreal or imaginary) the order was

bad because of its being not based on any reasoning and hence an order passed without application of mind.

5. In view of the above stated position, we allow the present petition (Civil Rieview Petition No. 22 of 2006) and order the expunction of all those observations appearing in para 16 or 41 or elsewhere in the judgment, which give the impression that the review petitioner stands indicted for interfering with the working of the Assessing Officer, Solan or pressurizing her into accepting the return as submitted by the assessee, without making any further probe. In fact the inquiry ordered by this Court, vide para 41 of the judgment, is for the purpose of finding out whether the review petitioner had actually interfered with the working of the Assessing Officer, Solan and pressurized her into passing the order of acceptance of the return as stated in the foot note of the order of Assessing Officer.

6. Two other Review Petitions No. 15 and 16 of 2002 have been filed by the assessee. The contents and the pith and substance of both the two review petitions are the same. Instead of one, two petitions have been filed because by the judgment of this Court not only the appeal filed against the assessee by the Revenue but also a writ petition filed by the assessee were disposed of. One petition is for the review of the order passed in the writ petition and the other for the review of the judgment passed in the appeal.

7. We have heard the learned counsel for the assessee. The points raised by him are:

(a) The appeal itself was not maintainable, because it was the Commissioner of Income Tax, New Delhi (to whom the area, where the assessee was doing his business, stands transferred) who had the

competence to file the appeal, but the same had been filed by the Income Tax Commissioner, Shimla;

(b) Appeal was admitted on twelve questions as submitted to the Court by the appellant – Commissioner of Income Tax, but this Court formulated two questions after the conclusion of the hearing and answered only those two questions, which was contrary to the spirit of Section 260-A of the Income Tax Act;

(c) Questions which this Court dealt with, while disposing of the appeal, did not arise out of the order of the Tribunal as the Tribunal dealt with only the question of jurisdiction while disposing of the appeal and it did not touch the merits.

8. We find no merit in any of the aforesaid submissions. Question of maintainability of the appeal, which was initially filed by the Income Tax Commissioner, Shimla and to which the Income Tax Commissioner, Delhi was later on added as a co-appellant, was considered by this Court while passing the judgment and the contention raised by the counsel for the assessee was dismissed with a clear cut finding that the appeal was maintainable. It is not open to the review petitioner to assail and challenge the said finding by way of review.

9. Coming to the next point, it is true that the appeal was admitted on twelve questions, but while making their submissions the counsel for the parties confined themselves only to a few points, which were covered partly by one and partly by some other questions and so the questions were re-formulated into two questions, confining their scope only to those points about which submissions were made by the learned counsel for the parties. Otherwise also, by the judgment, in question, this Court

decided not only the appeal but also a writ petition filed by the review petitioner itself and this also necessitated reformulation of questions.

10. As regards submission (C) above, learned counsel submitted that this Court gave the finding that the order of the Assessing Officer, Solan was bad but that such a question did not arise out of the appeal decided by the Income Tax Appellate Tribunal as the Tribunal had dealt with the question of jurisdiction only and hence this Court exceeded its appellate jurisdiction while holding that the order was bad on account of non-application of mind. The submission is factually incorrect. The Tribunal while accepting the appeal of the assessee held that the order had been passed by the Assessing Officer under Section 263 of the Income Tax Act on the basis of the inquiry conducted by her and that the Commissioner of Income Tax could not have interfered with the said order merely because he formed a different view on scanning the record. Appellate Tribunal clearly said that the order of the Assessing Officer was based on an inquiry conducted by her. This Court did not approve of this finding of the Tribunal, because the note appearing below the order of the Assessing Officer clearly shows that it is not passed on application of mind but on the 'interference by the Commissioner of Income Tax.'

11. Since none of the submissions made by the learned counsel has any merit, both the review petitions (Petition Nos. 15 and 16 of 2006) filed by the assessee, i.e. M/s The Green World Corporation, are dismissed.

**( Surjit Singh )**
**Judge**

**( V.K. Gupta )**
**Chief Justice**

**April 03, 2007 (BC)**

**Civil Review No. 22 of 2006**

Dhirendra Khare vs. Commissioner of Income Tax & others.

For the petitioner : Mr. Yasobant Das, Sr. Advocate, with M/s Janesh Mahajan and Arunav Patnaik, Advocates.
For the respondents: Mr. Vinay Kuthiala, Advocate, for respondent No. 1
M/s Ajay Vohra & B.C. Negi, Advocates, for respondent No. 2.

**Civil Review No. 15 of 2006**

M/s. Greenworld Corporation …. Petitioner
Vs.
Commissioner of Income Tax, Shimla ……. Respondent.

For the petitioner : M/s Ajay Vohra & B.C. Negi, Advocates.
For the respondent: Mr. Vinay Kuthiala, Advocate.

**Civil Review No. 16 of 2006**

M/s. Greenworld Corporation …. Petitioner
Vs.
Income Tax Officer, Parwanoo & others …. Respondents.

For the petitioner :Mr. Ajay Vohra & B.C. Negi, Advocates.
For the respondents: Mr. Vinay Kuthiala, Advocate.

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